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S.B. CIVIL MISC. APPEAL NO.1567/2006.
(Moola Ram Vs. Rakesh Kumar)

Date of Order :: 03.11.2006.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Devilal R. Vyas, for the appellant.

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Towards compensation for accidental death of Multana Ram (20 years), the Tribunal has made an award in the sum of Rs.2,49,600/- together with interest @ 6% per annum from the date of filing of the claim application, i.e. 19.08.2003 in favour of the parents of the deceased taking his monthly income at Rs.2,700/- and loss of contribution after deducting one-third at Rs.1,800/- per month and with application of multiplier of 11 in view of the age of the parents about 54 years.

Learned counsel for the claimant-appellants in this appeal seeking enhancement over the amount awarded by the Tribunal has strenuously contended that the claimants have led oral evidence to the effect that the deceased was earning about Rs.4,200/- per month and there is no reason for the Tribunal to have disbelieved such income. Learned counsel further submitted that the Tribunal has allowed non-pecuniary loss apparently on the lower side and has deprived the

brothers and sisters of the deceased of compensation altogether and, therefore, the award in question calls for modification. The submissions are not well founded.

The deceased has been shown to be an unmarried person and when no definite proof of income has been adduced on record, the Tribunal cannot be said to have been erred in taking the monthly income of the deceased at Rs.2,700/- per month. The Tribunal has erred, if at all, in favour of the claimants and not against them. The Tribunal has taken two-third of the estimated income of the deceased towards loss of contribution for the claimants and such assessment stands definitely on higher side when examined in the context of the fact situation of the case that the deceased was an unmarried person. Looking at the future certainties as well as uncertainties, the possibility of the deceased getting married in future and a large part of his income getting diverted to his own family cannot be ruled out. Assessment of pecuniary loss at Rs.2,37,600/- itself stands on much higher side.

It has also been contended that loss of agricultural income ought to have been taken into consideration, however, it has been admitted that the deceased has left behind about 50 bighas of agricultural land. By the very nature of such income, the same retains itself to

the claimants and a part of loss of agricultural income referable to the labour put by the victim has adequately been taken care of in the higher side assessment made by the Tribunal on pecuniary loss. Non-pecuniary loss has of course been allowed on lower side but again, in view of higher amount allowed on pecuniary loss, the ultimate award made by the Tribunal nevertheless stands on higher side. Disallowing any compensation to the claimants No. 3 to 6 also cannot be said to be erroneous in the fact situation of the case when they have not been shown totally dependent on the deceased.

In the aforesaid view of matter, this appeal remains bereft of substance and does not merit admission.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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